

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

REGINALD BARBOUR,

Plaintiff,

v.

CITY OF BIRMINGHAM,

Defendant.

CIVIL ACTION NO.

99-AR-1624-S

95 OCT 21 AM 10:10
U.S. DISTRICT COURT
N.D. OF ALABAMA

ENTERED
OCT 21 1999

MEMORANDUM OPINION

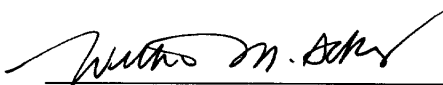
The court has for consideration a motion for summary judgment filed by defendant, City of Birmingham, on September 29, 1999. It not only presents uncontradicted evidentiary materials, but, in effect, also constitutes a motion pursuant to Rule 12(b)(6), F.R.Civ.P., in that it points out the absence of any allegation in the complaint which would circumvent the absolute defense provided by *Monell v. Dept. of Social Services of New York*, 98 S.Ct. 2015 (1978). Plaintiff's reliance on 42 U.S.C. § 1983 is foreclosed by *Monell*, and Code of Alabama of 1975, § 12-12-53 forms no basis for ancillary jurisdiction over a state law claim in this court, particularly when no state law claim against a municipality is or can be stated under § 12-12-53.

The court is necessarily tolerant of *pro se* litigants. The court will not dismiss the action based on plaintiff's refusal to comply with Rule 26, F.R.Civ.P., after express notice. Such a

sanction is not called for when the complaint itself is lacking in colorable merit. Plaintiff's unsworn denial of the affidavit of Christopher Jackson would be unavailing if not rendered moot by the fact that the circumstances of plaintiff's arrest are not material in view of *Monell*.

A separate appropriate motion granting defendant's motion for summary judgment will be entered.

DONE this 21st day of October, 1999.

A handwritten signature in black ink, appearing to read "William M. Ackers, Jr.", is written over a horizontal line.

WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE